

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

BRAD STEVENS,

Civil No. 16-3807 (JRT/LIB)

Plaintiff,

v.

THOMAS ROY, PAULA THIELAN,
JEFFERY PEDERSON, BRUCE REISER,
GREG SMITH, VICTORIA OTTE-
PHILLIPS, NANCY STACKEN, PETER
PUFFER, STEVEN ALLEN, LORI
KORTS, CAL LUDEMAN, LUCINDA
JESSON, DENNIS BENSON, NANCY
JOHNSTON, THOMAS LUNDQUIST,
JANE DOE, and JOHN DOE,

**MEMORANDUM OPINION
AND ORDER ADOPTING REPORT
AND RECOMMENDATION OF
MAGISTRATE JUDGE**

Defendants.

Brad Stevens, MN Correctional Facility, 1111 Highway 73, Moose Lake,
MN 55767, *pro se* plaintiff.

James H. Clark III, Assistant Attorney General, **MINNESOTA
ATTORNEY GENERAL'S OFFICE**, 445 Minnesota Street, Suite 1100,
St. Paul, MN 55401, for defendants.

On June 8, 2017, United States Magistrate Judge Leo I. Brisbois issued a Report and Recommendation (“R&R”) recommending that the Court grant Defendants’ motion to dismiss all of Plaintiff Brad Stevens’ claims. (Report & Recommendation (“R&R”) at 39, June 8, 2017, Docket No. 29.) The R&R noted that on March 14, 2017, Stevens indicated that he intended to amend his complaint; however, he never filed such a motion or a proposed amended complaint. (*Id.* at 11; *see also* Pl.’s Notice of Hr’g on Mot. to Leave to File First Am. Compl. & Scheduling Order, Mar. 14, 2017, Docket No. 25.)

On June 19, 2017, Stevens filed a motion for leave to file a first amended complaint as well as several documents in support of the motion.¹ Stevens explained that he mailed the first amended complaint to the Court on March 11, 2017, but that he later learned that the Court never received the mailing. (Decl. of Brad Stevens in Supp. of Mot. for Leave to File First Am. Compl. ¶¶ 1-3, 8, June 19, 2017, Docket No. 34.) Also on June 19, 2017, Stevens objected to the R&R on the grounds that it was “moot, premature, or irrelevant” because the R&R did not consider Stevens’ first amended complaint, which supposedly cured deficiencies by modifying the named defendants and the nature of his claims. (Pl.’s Obj. to R&R at 1-2, June 19, 2017, Docket No. 36.)

Subsequently, on July 17, 2017, the Magistrate Judge issued an order striking Stevens’ motion for leave to file a first amended complaint, as well as his related documents, for failing to comply with Local Rule 7.1(b) requirements. (Order, July 17, 2017, Docket No. 46.) On July 27, 2017, Stevens filed a motion for leave to voluntarily dismiss the complaint. (Mot. for Leave to Voluntary Dismiss Compl., July 27, 2017, Docket No. 47.) In his motion, Stevens acknowledged that his objection to the R&R is now “moot or premature” based on the Magistrate Judge’s decision striking his motion for leave to amend his complaint. (*Id.* at 3.) The record does not reflect that the Court received the first amended complaint prior to the Magistrate Judge issuing the R&R; the

¹ (Mot. to Leave to File First Am. Compl., June 19, 2017, Docket No. 30; Mem. in Supp. of Pl.’s Mot. for Leave to File First Am. Compl., June 19, 2017, Docket No. 31; Decl. of Brad Stevens in Supp. of Mot. for Leave to Amend Compl., June 19, 2017, Docket No 32; Mot. for Leave to Refile Pl.’s Mot. for Leave to File First Am. Compl. Docs., June 19, 2017, Docket No. 33; Decl. of Brad Stevens in Supp. of Mot. for Leave to File First Am. Compl., June 19, 2017, Docket No. 34; Not. of Hr’g on Mot. for Leave to File First Am. Compl., June 19, 2017, Docket No. 35.)

Magistrate Judge, therefore, did not err when he failed to consider the first amended complaint. Because Stevens' sole objection to the R&R fails, the Court will overrule Stevens' objection, adopt the R&R, and grant Defendants' motion to dismiss.

Accordingly, the Court will deny Stevens' motion for voluntary dismissal as moot. The Court notes, however, that the majority of Stevens' claims are dismissed without prejudice and the claims that are dismissed with prejudice are legally deficient such that additional pleadings could not establish a plausible claim.

ORDER

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. The Court **OVERRULES** Stevens' Objection [Docket No. 36], **ADOPTS** the Magistrate Judge's Report and Recommendation dated June 8, 2017 [Docket No. 29], and **GRANTS** Defendants' Motion to Dismiss [Docket No. 16], as follows:

- a. Stevens' 42 U.S.C. § 1983 claims are **DISMISSED with prejudice** to the extent they seek monetary damages against Defendants in their official capacities.
- b. Stevens' claims against Defendant Paula Thielan are **DISMISSED with prejudice**.
- c. Stevens' Fifth Amendment claims alleged in Count III are **DISMISSED with prejudice**.
- d. All other claims are **DISMISSED without prejudice**.

2. The Court **DENIES** Stevens' Motion for Leave to Voluntarily Dismiss the Complaint [Docket No. 47] as **moot**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: September 19, 2017
at Minneapolis, Minnesota.

s/John R. Tunheim
JOHN R. TUNHEIM
Chief Judge
United States District Court